

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

KIRT ALLEN ESTHAY §
VS. § CIVIL ACTION NO. 9:15cv124
MARK BARBARA, ET AL. §

MEMORANDUM ORDER REGARDING TRANSFER

Plaintiff Kirt Allen Esthay, an inmate confined at the Stiles Unit located in Beaumont, Texas, proceeding *pro se*, brings this civil rights action pursuant to 42 U.S.C. § 1983 against Mark Barbara, Pinky Patel, and Mr. Dunlap. All of the defendants are employed at the Stiles Unit.

The above-styled action was referred to the undersigned United States Magistrate Judge pursuant to 28 U.S.C. 636 and the Local Rules for the Assignment of Duties to United States Magistrate Judges.

Analysis

Plaintiff claims the defendants have acted with deliberate indifference to his medical treatment.

The Civil Rights Act, 42 U.S.C. §1981, *et seq.*, under which this case is brought, does not contain a specific venue provision. Accordingly, venue in civil rights cases is controlled by 28 U.S.C. § 1391. *Jones v. Bailey*, 58 F.R.D. 453 (N.D. Ga. 1972), *aff'd per curium*, 480 F.2d 805 (5th Cir. 1973).

When, as in this case, jurisdiction is not founded solely on diversity of citizenship, 28 U.S.C. § 1391 provides that venue is proper only in the judicial district where the defendants reside or in which the claim arose. The claims which form the basis of plaintiff's complaint occurred at the Stiles Unit which is located in Jefferson County, Texas. Pursuant to 28 U.S.C. § 124, Jefferson County is located in the Eastern District of Texas. As a result, venue is proper in the Eastern District of Texas.

However, while Jefferson County is in the Eastern District of Texas, it is in the Beaumont Division of this district, rather than the Lufkin Division. When a case is filed in the wrong district or division, the court “shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought.” 28 U.S.C. § 1406(a). *See Kreimerman v. Casa Veerkamp, S.A. de C.V.*, 22 F.3d 634 (5th Cir. 1994) (remanding the case to the Houston Division of the United States District Court for the Southern District of Texas, with instructions that the case be transferred to the McAllen Division of the United States District Court for the Southern District of Texas pursuant to Section 1406(a)). Accordingly, this case should be transferred to the Beaumont Division of this court. A Transfer Order shall be entered in accordance with this Memorandum Opinion.

SIGNED this 29 day of October, 2015.



KEITH F. GIBLIN
UNITED STATES MAGISTRATE JUDGE